



October 28, 1999

Mr. Scott Fawcett
Legal Counsel
Open Records Division
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR99-3034

Dear Mr. Fawcett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127675.

The Comptroller of Public Accounts (the "comptroller") received a request for the following:

A computer list of all expenditures from the Crime Victims' Compensation Fund for the last three fiscal year (the two completed fiscal years and the current). Please include all information available, including but not limited to, payee's name, address, and amount.

You state that you have released most of the responsive information, including the payee name, city, state, zip code, object code, and dollar amount of all payments from the Crime Victims' Compensation Fund. However, on behalf of the Crime Victims' Compensation Division of the Office of the Attorney General (the "OAG"), you seek to withhold the payees' street addresses under sections 552.101 and 552.108 of the Government Code. We have reviewed the submitted representative sample documents and have considered the arguments submitted by your office and the OAG.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information from that submitted to this office.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Id.* at 683-85.

Section 552.101 also embraces constitutional privacy. *See Industrial Found.*, 540 S.W.2d at 678. The constitutional right to privacy consists of two related interests: 1) the individual interest in independence in making certain kinds of important decisions, and 2) the individual interest in independence in avoiding disclosure of personal matters. The first interest applies to the traditional “zones of privacy” described by the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973), and *Paul v. Davis*, 424 U.S. 693 (1976). These “zones” include matters related to marriage, procreation, contraception, family relationships, and child rearing and education.

The second interest, in nondisclosure or confidentiality, may be somewhat broader than the first. The test for constitutional privacy involves a *balancing* of the individual’s privacy interests against the public’s need to know information of public concern. *See generally Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985).

We acknowledge that there is generally a legitimate public interest in information relating to the applicants for or recipients of public funds. *See generally* Open Records Decision No. 600 (1992). In this instance, however, the OAG contends that the release of crime victims’ street addresses would compromise these victims’ safety. The OAG also contends that the legitimate public interest in the identities of Crime Victims’ Compensation Fund payees is sufficiently served by the release of the crime victims’ names, cities, states. *See generally Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied). We have reviewed the arguments and agree that, in this instance, the public’s interest is served by the release of the victims’ names, cities, and states. Therefore, the street addresses of crime victims who have received payments from the Crime Victims’ Compensation Fund are protected by constitutional privacy, and must not be released. *See also* Open Records Letter No. 99-2935 (1999); *see generally* Tex. Const. art. I, § 30(a) (crime victim has right to be treated with respect in order to protect the victim’s dignity and privacy); Attorney General Opinion JM-81 (1983) (names of parents of SIDS victims protected by right of privacy).

You also indicate that some of the payments from Crime Victims’ Compensation Fund were made to business entities and other non-individual payees. You explain that these payees are not crime victims, but organizations and businesses that provide services to crime victims. You state and we agree that businesses do not have constitutional or common-law privacy

rights. See *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co., Inc.*, 777 S.W.2d 434, 436 (Tex. App.--Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)); Open Records Decision Nos. No. 600 (1993) (stating that common-law privacy protects rights of individuals, not corporations), 192 (1978) (stating that right of privacy protects feelings and sensibilities of human beings, and does not protect evaluation report on private college). You ask, however, whether the street addresses of the non-individual payees may be withheld under section 552.108.

Section 552.108, the "law enforcement exception," provides:

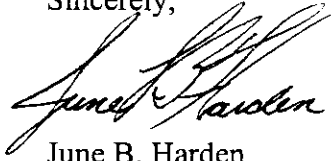
(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [public disclosure] if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Neither you nor the OAG has demonstrated that any of the provisions of section 552.108 are applicable to the street addresses of non-individual payees. Therefore, the comptroller must release the street addresses of non-individual payees to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden", written in a cursive style.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ljp

Ref: ID# 127675

Encl. Submitted documents

cc: Ms. Laura Lee Stapleton
Jackson Walker, L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(w/o enclosures)